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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

ANONYMOUS, an attorney admitted to practice in the State of New York,

Petitioner,

—v.—

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK and JOHN G. BONOMI, Chief Counsel, Committee on Grievances of the Association of the Bar of the City of New York,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

PAGE

Question Presented 1

Statement of the Case 1

ARGUMENT:

There Is No Basis for Granting the Writ 3

CONCLUSION 5

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Question Presented

Does the federal court abstention doctrine stated in *Huffman* v. *Pursue, Ltd.*, —— U.S. ——, 43 L. ed.2d 482 (1975) bar a federal civil rights action to enjoin prosecution of a pending, undecided state bar association disciplinary proceeding against an attorney, such a proceeding being, under state law, a state judicial proceeding?

Statement of the Case

While the case is set forth in the opinion below,* the basic facts here relevant should be briefly summarized therefrom.

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* Appendix to petition, 2a to 4a.

The Committee on Grievances of respondent, The Association of the Bar of the City of New York, acting under the By-Laws of the Association, instituted a disciplinary proceeding against petitioner by serving him with a charge letter April 16, 1974, setting forth the charges against him. Respondent John G. Bonomi, Esq., Chief Counsel of the Committee, acted as attorney for the Committee. A hearing was held before a hearing panel of the Committee on May 7, 1974.

At the hearing, counsel for the Committee offered in evidence against petitioner minutes of testimony given by petitioner before a New York County Grand Jury under a grant of transactional immunity. Petitioner objected to the admission of the minutes on the ground that their admission against him would violate his constitutional rights.

The hearing panel overruled the objection and admitted the minutes and adjourned to June 4, 1974 without having made a decision on the merits.

On June 4, 1974, petitioner instituted his present action in the United States District Court, obtaining a stay which remained in effect until the action by the United States Court of Appeals, referred to below, on April 3, 1975.

On July 31, 1974, the District Court granted respondents' motion to dismiss on the basis of *Younger* v. *Harris,* 401 U.S. 37 (1971) and this result was affirmed by the Court of Appeals on April 3, 1975, on the basis of voluminous authority including *Younger* and *Huffman* v. *Pursue, Ltd.,* —— U.S. ——, 43 L. ed. 483, decided March 18, 1975.*

* The Court of Appeals' opinion is set forth in full in petitioner's appendix, 1a to 16a.

ARGUMENT

There Is No Basis for Granting the Writ.

None of the situations enumerated in this Court's Rule 19 exists here and there is no special or important reason for granting the writ of certiorari prayed for. The decision below was correct.

The disciplining of attorneys in New York is a matter of state interest, entrusted by the state to the Appellate Division of the Supreme Court of the State of New York. Judiciary Law of New York, Section 90.2.

In carrying out its responsibilities under Section 90.2, the Appellate Division entrusts the necessary investigatory and prosecutorial functions to the Grievance Committee. As Chief Judge Fuld said in *Wiener* v. *Weintraub,* 22 N.Y. 2d 330, 331-2, 292 N.Y.S.2d 667, 668-9 (1969):

> "Petitions or complaints charging professional misconduct of an attorney which, in the past, were presented to the General Term of the Supreme Court are now usually filed with the Grievance Committee of a bar association. And, it has been observed, a proceeding before such a committee constitutes a 'judicial proceeding.' In the investigation of such complaints and in the conduct of such proceedings, then, the bar association's Grievance Committee acts as a quasi-judicial body and, as such, is an arm of the Appellate Division."

See also *Doe* v. *Rosenberry,* 255 F.2d 118 (2nd Cir. 1958).

Thus, respondent Association's Grievance Committee, in its proceeding against petitioner, and its Chief Counsel,

respondent Bonomi, acted as an agency of the state court in the enforcement of state discipline against petitioner, and the proceeding is a state judicial proceeding.

Under these circumstances, the Court of Appeals correctly held that federal intervention is barred. Its decision is not in conflict with any other circuit and conforms to decisions in three other circuits;* and it is supported by the decisions of this Court. *Huffman* v. *Pursue, Ltd.*, —— U.S. ——, 43 L. ed. 482 (1975); *Geiger* v. *Jenkins*, 401 U.S. 985 (1971), affirming 316 F. Supp. 370 (D.C. Ga. 1970); *Younger* v. *Harris*, 401 U.S. 37 (1971).

Paraphrasing this Court's language in *Huffman* (43 L. ed. at 492), an offense to New York's interest in the disciplining of its attorneys is likely to be every bit as great as it would be in a criminal proceeding; and a federal injunction in this case would disrupt the New York interests which underlie its efforts to protect the integrity of its bar and to obtain compliance with its standards of professional conduct.

Furthermore, there are no special circumstances here calling for the ignoring of the non-intervention rule. See *Huffman*, 43 L. ed. at 496.

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* See *Lynch* v. *Snepp*, 472 F.2d 769, 773 (4th Cir. 1973); cert. denied, 415 U.S. 983 (1974); *Palaio* v. *McAuliffe*, 466 F.2d 1230, 1232-33 (5th Cir. 1972); *Cousins* v. *Wigoda*, 463 F.2d 603 (7th Cir.), application for a stay denied, 409 U.S. 1201 (1972).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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